

# HOUSE BILL No. 1348

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 5-10-14; IC 36-8.

**Synopsis:** Public safety disability pensions. Creates a presumption that a police officer, a firefighter, or an emergency medical services provider who incurs a disability from certain cancers or a heart or lung disease while actively employed has incurred a disability in the line of duty. Allows a meeting or hearing held to rebut the presumption to be held as an executive session. Provides that a line of duty disability benefit retains the status of a disability benefit for the life of the disabled member. (The introduced version of this bill was prepared by the pension management oversight commission.)

**Effective:** July 1, 2005.

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**Buell, Kromkowski, Ayres**

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January 13, 2005, read first time and referred to Committee on Public Safety and Homeland Security.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE BILL No. 1348

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 5-10-14 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]:  
4 **Chapter 14. Emergency and Public Safety Employee Disability**  
5 **from Certain Cancers or Heart or Lung Disease Presumed**  
6 **Incurred in the Line of Duty**  
7 **Sec. 1. As used in this chapter, "at risk for occupational**  
8 **exposure" means that an individual incurs risk in performing the**  
9 **basic duties of the individual's employment, including:**  
10 **(1) providing emergency medical treatment in a nonhealth**  
11 **care setting where there is a potential for contact with a:**  
12 **(A) known carcinogen; or**  
13 **(B) substance or condition that adversely affects an**  
14 **individual's cardiovascular or respiratory system;**  
15 **(2) working at the scene of an accident, a fire, or another**  
16 **rescue or public safety operation, or working in an emergency**  
17 **rescue vehicle or a public safety vehicle, during which the**



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individual has contact with a:

- (A) known carcinogen; or
- (B) substance or condition that adversely affects an individual's cardiovascular or respiratory system;
- (3) engaging in the pursuit, apprehension, and arrest of law violators, during which the individual may be exposed to a:
  - (A) known carcinogen; or
  - (B) substance or condition that adversely affects an individual's cardiovascular or respiratory system; or
- (4) maintaining custody and physical restraint of prisoners or inmates of a prison, a jail, or another criminal detention facility, during which the individual may be exposed to a:
  - (A) known carcinogen; or
  - (B) substance or condition that adversely affects an individual's cardiovascular or respiratory system.

Sec. 2. As used in this chapter, "employee" means an individual who:

- (1) is employed full time by the state or a political subdivision of the state as:
  - (A) a member of a fire department (as defined in IC 36-8-1-8);
  - (B) an emergency medical services provider (as defined in IC 16-41-10-1); or
  - (C) a member of a police department (as defined in IC 36-8-1-9);
- (2) in the course of the individual's employment is at risk for occupational exposure; and
- (3) is not employed elsewhere by the state or a political subdivision of the state in a similar capacity.

Sec. 3. As used in this chapter, "exposure related cancer" refers to a cancer that is caused by a known carcinogen to which an individual is at risk for occupational exposure.

Sec. 4. As used in this chapter, "exposure related heart or lung disease" refers to a disease or an impairment of the cardiovascular or respiratory system caused by a substance or condition to which an individual is at risk for occupational exposure.

Sec. 5. As used in this chapter, "known carcinogen" refers to a substance or an agent the exposure to which is recognized by the:

- (1) International Agency for Research on Cancer; or
  - (2) National Institute for Occupational Safety and Health;
- as creating a high risk for the development of cancer.

Sec. 6. As used in this chapter, "political subdivision" has the

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1 meaning set forth in IC 6-3.5-2-1.

2 **Sec. 7. As used in this chapter, "substance or condition that**  
 3 **adversely affects an individual's cardiovascular or respiratory**  
 4 **system" refers to a substance or condition the exposure to which**  
 5 **is recognized by the National Institute for Occupational Safety and**  
 6 **Health as creating a high risk for the development of heart or lung**  
 7 **disease.**

8 **Sec. 8. (a) An employee who:**

9 **(1) is diagnosed with an exposure related cancer or exposure**  
 10 **related heart or lung disease that:**

11 **(A) requires medical treatment; or**

12 **(B) results in total or partial disability; and**

13 **(2) at the time of the diagnosis:**

14 **(A) is actively employed; or**

15 **(B) has terminated employment not more than sixty (60)**  
 16 **months earlier;**

17 **is presumed to have a disability incurred in the line of duty.**

18 **(b) The presumption described in subsection (a) may be**  
 19 **rebutted by competent evidence.**

20 **(c) A meeting or hearing held to rebut the presumption**  
 21 **described in subsection (a) may be held as an executive session**  
 22 **under IC 5-14-1.5-6.1(b)(1).**

23 **Sec. 9. This chapter does not affect the requirements for**  
 24 **determining eligibility for disability benefits provided by the state**  
 25 **or a political subdivision of the state except to the extent of**  
 26 **determining whether an employee incurred a disability in the line**  
 27 **of duty.**

28 **SECTION 2. IC 36-8-6-8 IS AMENDED TO READ AS FOLLOWS**  
 29 **[EFFECTIVE JULY 1, 2005]: Sec. 8. (a) For a member who became**  
 30 **disabled before July 1, 2000, the 1925 fund shall be used to pay a**  
 31 **pension in a sum determined by the local board, but not exceeding:**

32 **(1) for a disability or disease occurring before July 1, 1982, fifty**  
 33 **percent (50%); and**

34 **(2) for a disability or disease occurring after June 30, 1982,**  
 35 **fifty-five percent (55%);**

36 **of the salary of a first class patrolman, to a member of the police**  
 37 **department who has suffered or contracted a mental or physical disease**  
 38 **or disability that renders the patrolman unable to perform the essential**  
 39 **functions of any duty in the police department, considering reasonable**  
 40 **accommodation to the extent required by the Americans with**  
 41 **Disabilities Act. If a member who becomes eligible for a disability**  
 42 **pension has more than twenty (20) years of service, the member is**

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entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(b) Except as otherwise provided in this subsection, for a member who becomes disabled after June 30, 2000, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

(1) that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-14; and

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

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(c) Except as otherwise provided in this subsection, for a member who becomes disabled after June 30, 2000, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

(1) that is not described in subsection (b)(1); and

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(d) The member must have retired from active service after a physical examination by the police surgeon or another surgeon appointed by the local board. The disability must be determined solely by the local board after the examination and a hearing conducted under IC 36-8-8-12.7. A member shall be retained on active duty with full pay until the member is retired by the local board because of the disability.

(e) After a member has been retired upon pension, the local board may, at any time, require the retired member to again be examined by the police surgeon or another surgeon appointed by the local board. After the examination the local board shall conduct a hearing under IC 36-8-8-12.7 to determine whether the disability still exists and whether the retired member should remain on the pension roll. The retired member shall be retained on the pension roll until reinstated in the service of the police department, except in case of resignation. If after the examination and hearing the retired member is found to have recovered from the member's disability and to be again fit for active duty, then the member shall be put on active duty with full pay and from that time is no longer entitled to payments from the 1925 fund. If the member fails or refuses to return to active duty, the member waives all rights to further benefits from the 1925 fund.

(f) If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below:

(1) the amount of the first full monthly pension received by that person; or

(2) fifty-five percent (55%) of the salary of a first class patrolman;

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1 whichever is greater.

2 (g) Time spent receiving disability benefits is considered active  
3 service for the purpose of determining retirement benefits until the  
4 member has a total of twenty (20) years of service.

5 (h) A fund member who is receiving disability benefits under ~~this~~  
6 **chapter subsection (a) or (c)** shall be transferred from disability to  
7 regular retirement status when the member becomes fifty-five (55)  
8 years of age.

9 **(i) A fund member who is receiving disability benefits under**  
10 **subsection (b) is entitled to:**

11 **(1) receive a disability benefit for the remainder of the fund**  
12 **member's life; and**

13 **(2) have the amount of the disability benefit computed under**  
14 **section 9 of this chapter when the fund member becomes**  
15 **fifty-five (55) years of age.**

16 SECTION 3. IC 36-8-7-11 IS AMENDED TO READ AS  
17 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) Benefits paid  
18 under this section are subject to section 2.5 of this chapter.

19 (b) If a member of the fire department becomes seventy (70) years  
20 of age or is found upon examination by a medical officer to be  
21 physically or mentally disabled and unable to perform the essential  
22 functions of the job, considering reasonable accommodation to the  
23 extent required by the Americans with Disabilities Act, so as to make  
24 necessary the person's retirement from all service with the department,  
25 the local board shall retire the person.

26 (c) The local board may retire a person for disability only after a  
27 hearing conducted under IC 36-8-8-12.7.

28 (d) If after the hearing the local board determines that a person who  
29 became disabled before July 1, 2000, is disabled and unable to perform  
30 the essential functions of the job, considering reasonable  
31 accommodation to the extent required by the Americans with  
32 Disabilities Act, the local board shall then authorize the monthly  
33 payment to the person from the 1937 fund of an amount equal to  
34 fifty-five percent (55%) of the salary of a fully paid first class  
35 firefighter in the unit at the time of the payment of the pension. All  
36 physical and mental examinations of members of the fire department  
37 shall be made on order of the local board by a medical officer  
38 designated by the local board.

39 (e) If after the hearing under this section and a recommendation  
40 under section 12.5 of this chapter, the 1977 fund advisory committee  
41 determines that a person who becomes disabled after June 30, 2000:

42 (1) has a disability that is:

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(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is responding to an emergency or reported emergency for which the fund member is trained; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-14; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

(f) If after the hearing under this section and a recommendation under section 12.5 of this chapter, the 1977 fund advisory committee determines that a person who becomes disabled after June 30, 2000:

(1) has a disability that is not a disability described in subsection (e)(1); and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall then authorize the monthly payment to the person

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from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

SECTION 4. IC 36-8-7-12.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12.1. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) A member who has been in service twenty (20) years, upon making a written application to the fire chief, may be retired from all service with the department without a medical examination or disability. Except as provided in subsection (f), the local board shall authorize the payment to the retired member of fifty percent (50%) of the salary of a fully paid first class firefighter of the unit at the time of the payment of the pension, plus:

(1) for a member who retires before January 1, 1986, two percent (2%) of that salary for each year of service; or

(2) for a member who retires after December 31, 1985, one percent (1%) of that salary for each six (6) months of service; over twenty (20) years. However, the pension in one (1) year may not exceed an amount greater than seventy-four percent (74%) of the salary of a fully paid first class firefighter.

(c) A member who is discharged from the fire department after having served at least twenty (20) years is entitled to receive the amount equal to the amount that the member would have received if the member retired voluntarily.

(d) All pensions in a class are on an equal basis. The local board may not depart from this chapter in authorizing the payment of pensions.

(e) The monthly pension payable to a member may not be reduced below the amount of the first full monthly pension received by that person.

(f) The monthly pension payable to a member who is transferred from disability to regular retirement status may not be reduced below fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension.

(g) A benefit payable under this section shall be paid in not less than twelve (12) monthly installments.

(h) A fund member who is receiving disability benefits under **section 11(d) or 11(f)** of this chapter shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

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**(i) A fund member who is receiving disability benefits under section 11(e) of this chapter is entitled to:**

**(1) receive a disability benefit for the remainder of the fund member's life; and**

**(2) have the amount of the disability benefit computed under section 11(e) of this chapter when the fund member becomes fifty-five (55) years of age.**

SECTION 5. IC 36-8-7.5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13. (a) For a member who becomes disabled before July 1, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to:

(1) fifty percent (50%) for a disease or disability occurring before July 1, 1991; and

(2) fifty-five percent (55%) for a disease or disability occurring after June 30, 1991;

of the salary of a first class patrolman in the police department, computed and payable as prescribed by section 12(b) of this chapter, to an active member of the police department who has been in active service for more than one (1) year and who has suffered or contracted a mental or physical disease or disability that render the member permanently unfit for active duty in the police department, or to an active member of the police department who has been in active service for less than one (1) year who has suffered or received personal injury from violent external causes while in the actual discharge of the member's duties as a police officer. The pensions provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department.

(b) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to fifty-five percent (55%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who:

(1) has suffered or incurred a disability that renders the member permanently unfit for active duty in the police department and that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense; or

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(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-14; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pensions provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(c) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to fifty-five percent (55%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who has been in active service for at least one (1) year and:

(1) has suffered or incurred a disability that:

(A) renders the member permanently unfit for active duty in the police department; and

(B) is not described in subsection (b)(1); and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pension provided in this subsection shall be paid only so long as

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the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(d) For a member who became disabled before July 1, 2000, the 1953 fund shall be used to pay temporary benefits in an annual sum equal to thirty percent (30%) of the salary of a first class patrolman in the police department, computed and payable as prescribed by section 12(a) of this chapter, to an active member of the police department who has been in active service for more than one (1) year and who has suffered any physical or mental disability that renders the member temporarily or permanently unable to perform ~~his~~ **the member's** duties as a member of the police department, or to an active member of the police department who has been in active service for less than one (1) year and who has suffered or received personal injury from violent external causes while in the actual discharge of the member's duties as a police officer, until the time the member is physically and mentally able to return to active service on the police department.

(e) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to thirty percent (30%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who:

(1) suffers or incurs a disability that renders the member temporarily unfit for active duty in the police department and that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational

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mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-14; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pension provided in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(f) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay temporary benefits in an annual sum equal to thirty percent (30%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department:

(1) who has been in active service for at least one (1) year;

(2) suffers or incurs a disability that:

(A) renders the member temporarily unfit for active duty in the police department; and

(B) is not described in subsection (e)(1); and

(3) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pension provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

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(g) If an application is made by an active member of the police department because of physical or mental disability for temporary benefits as provided in subsection (d), (e), or (f), the benefit is not payable until the local board determines after a hearing conducted under IC 36-8-8-12.7 that the member is unfit for active duty on the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act. Before the hearing, a physician to be appointed by the local board shall examine the member and certify in writing whether in the physician's opinion the member is unfit, physically or mentally, for active duty in the police department. After the pension or benefit has been granted by the local board, the payment commences with the original date of the injury or illness causing the disability.

(h) A member who has been granted a disability benefit under this section and who fails or refuses to submit to a physical examination at any time by the local board physician has no right in the future to receive the disability benefit, and any benefit that has been granted shall be immediately canceled by the local board.

(i) The local board may, from time to time, require a member of the police department who is receiving at any time disability benefits or pensions as provided in this section to be examined by the physician appointed by the local board. After the examination, the local board shall conduct a hearing under IC 36-8-8-12.7 to determine whether the disability still exists and whether the member should continue to receive the pension or benefit. If after the examination and hearing the member is found to have recovered from the member's disability and is fit for active duty on the police department, then upon written notice to the member by the local board, the member shall be reinstated in active service, the safety board shall be informed of the action of the local board, and from that time the member is no longer entitled to payments from the 1953 fund. If the member fails or refuses to return to active duty after ordered by the local board, the member ceases to be a member of the 1953 fund and waives all rights to any further pensions or benefits provided by the 1953 fund.

(j) Notwithstanding any other provision of this chapter, no disability benefit may be paid for any disability based upon or caused by any mental or physical condition that a member had at the time the member entered or reentered the member's active service in the police department.

(k) If a member who is receiving disability benefits under subsection (a), (b), or (c) for a disease or disability occurring after June 30, 1991, is transferred from disability to regular retirement status, the

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member's monthly pension may not be reduced below fifty-five percent (55%) of the salary of a first class patrolman at the time of payment of the pension.

(l) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material compiled to determine the existence of a disability shall be:

(1) kept in separate medical files for each member; and

(2) treated as confidential medical records.

(m) A fund member who is receiving disability benefits under ~~this chapter subsection (d) or (f)~~ shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

**(n) A fund member who is receiving disability benefits under subsection (e) is entitled to:**

**(1) receive a disability benefit for the remainder of the fund member's life; and**

**(2) have the amount of the disability benefit computed under section 12 of this chapter when the fund member becomes fifty-five (55) years of age.**

SECTION 6. IC 36-8-8-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12. (a) Benefits paid under this section are subject to sections 2.5 and 2.6 of this chapter.

(b) If an active fund member has a covered impairment, as determined under sections 12.3 through 13.1 of this chapter, the member is entitled to receive the benefit prescribed by section 13.3 or 13.5 of this chapter. A member who has had a covered impairment and returns to active duty with the department shall not be treated as a new applicant seeking to become a member of the 1977 fund.

(c) If a retired fund member who has not yet reached the member's fifty-second birthday is found by the PERF board to be permanently or temporarily unable to perform all suitable work for which the member is or may be capable of becoming qualified, the member is entitled to receive during the disability the retirement benefit payments payable at fifty-two (52) years of age. During a reasonable period in which a disabled fund member is becoming qualified for suitable work, the member may continue to receive disability benefit payments. However, benefits payable for disability under this subsection are reduced by amounts for which the fund member is eligible from:

(1) a plan or policy of insurance providing benefits for loss of time because of disability;

(2) a plan, fund, or other arrangement to which the fund member's employer has contributed or for which the fund member's

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1 employer has made payroll deductions, including a group life  
 2 policy providing installment payments for disability, a group  
 3 annuity contract, or a pension or retirement annuity plan other  
 4 than the fund established by this chapter;

5 (3) the federal Social Security Act (42 U.S.C. 401 et seq.), the  
 6 Railroad Retirement Act (45 U.S.C. 231 et seq.), the United States  
 7 Department of Veterans Affairs, or another federal, state, local, or  
 8 other governmental agency;

9 (4) worker's compensation payable under IC 22-3; and

10 (5) a salary or wage, including overtime and bonus pay and extra  
 11 or additional remuneration of any kind, the fund member receives  
 12 or is entitled to receive from the member's employer.

13 For the purposes of this subsection, a retired fund member is  
 14 considered eligible for benefits from subdivisions (1) through (5)  
 15 whether or not the member has made application for the benefits.

16 (d) Notwithstanding any other law, a plan, policy of insurance, fund,  
 17 or other arrangement:

18 (1) delivered, issued for delivery, amended, or renewed after  
 19 April 9, 1979; and

20 (2) described in subsection (c)(1) or (c)(2);

21 may not provide for a reduction or alteration of benefits as a result of  
 22 benefits for which a fund member may be eligible from the 1977 fund  
 23 under subsection (c).

24 (e) Time spent receiving disability benefits is considered active  
 25 service for the purpose of determining retirement benefits until the  
 26 fund member has a total of twenty (20) years of service.

27 (f) A fund member who is receiving disability benefits:

28 (1) under **section 13.3(d) of this chapter; or**

29 (2) **based on a determination under this chapter that the fund**  
 30 **member has a Class 3 impairment;**

31 shall be transferred from disability to regular retirement status when the  
 32 member becomes fifty-five (55) years of age.

33 (g) **A fund member who is receiving disability benefits:**

34 (1) **under section 13.3(c) of this chapter; or**

35 (2) **based on a determination under this chapter that the fund**  
 36 **member has a Class 1 or Class 2 impairment;**

37 **is entitled to receive a disability benefit for the remainder of the**  
 38 **fund member's life.**

39 SECTION 7. IC 36-8-8-12.5 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 12.5. (a) This section  
 41 applies only to a fund member who:

42 (1) is hired for the first time after December 31, 1989;

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(2) chooses coverage by this section and section 13.5 of this chapter under section 12.4 of this chapter; or  
 (3) is described in section 12.3(c)(2) of this chapter.

(b) At the same hearing where the determination of whether the fund member has a covered impairment is made, the local board shall determine the following:

(1) Whether the fund member has a Class 1 impairment. A Class 1 impairment is a covered impairment that is the direct result of one (1) or more of the following:

(A) A personal injury that occurs while the fund member is on duty.

(B) A personal injury that occurs while the fund member is off duty and is responding to:

(i) an offense or a reported offense, in the case of a police officer; or

(ii) an emergency or reported emergency for which the fund member is trained, in the case of a firefighter.

(C) An occupational disease (as defined in IC 22-3-7-10). A covered impairment that is included within this clause and subdivision (2) shall be considered a Class 1 impairment.

(D) A health condition caused by an exposure risk disease that results in a presumption of disability or death incurred in the line of duty under IC 5-10-13.

(2) Whether the fund member has a Class 2 impairment. A Class 2 impairment is a covered impairment that is:

(A) a duty related disease. A duty related disease means a disease arising out of the fund member's employment. A disease shall be considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

~~(A)~~ (i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

~~(B)~~ (ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

~~(C)~~ (iii) the disease can be traced to the fund member's employment as the proximate cause; **or**

**(B) a health condition caused by an:**

**(i) exposure related heart or lung disease; or**

**(ii) exposure related cancer;**

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1           **that results in a presumption of disability incurred in the**  
 2           **line of duty under IC 5-10-14.**

3           (3) Whether the fund member has a Class 3 impairment. A Class  
 4           3 impairment is a covered impairment that is not a Class 1  
 5           impairment or a Class 2 impairment.

6           SECTION 8. IC 36-8-8-13.3 IS AMENDED TO READ AS  
 7           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 13.3. (a) This section  
 8           applies only to a fund member who:

9           (1) is hired for the first time before January 1, 1990; and  
 10          (2) does not choose coverage by sections 12.5 and 13.5 of this  
 11          chapter under section 12.4 of this chapter.

12          This section does not apply to a fund member described in section  
 13          12.3(c)(2) of this chapter.

14          (b) A fund member:

15          (1) who became disabled before July 1, 2000;  
 16          (2) is determined to have a covered impairment; and  
 17          (3) for whom it is determined that there is no suitable and  
 18          available work within the fund member's department, considering  
 19          reasonable accommodation to the extent required by the  
 20          Americans with Disabilities Act;

21          is entitled to receive during the disability a benefit equal to the benefit  
 22          that the fund member would have received if the fund member had  
 23          retired. If the disabled fund member does not have at least twenty (20)  
 24          years of service or is not at least fifty-two (52) years of age, the benefit  
 25          is computed and paid as if the fund member had twenty (20) years of  
 26          service and was fifty-two (52) years of age.

27          (c) Except as otherwise provided in this subsection, a fund member:

28          (1) who becomes disabled after July 1, 2000;  
 29          (2) who is determined to have a covered impairment that is:

30                  (A) the direct result of:

31                       (i) a personal injury that occurs while the fund member is on  
 32                       duty;

33                       (ii) a personal injury that occurs while the fund member is  
 34                       off duty and is responding to an offense or a reported  
 35                       offense, in the case of a police officer, or an emergency or  
 36                       reported emergency for which the fund member is trained,  
 37                       in the case of a firefighter; or

38                       (iii) an occupational disease (as defined in IC 22-3-7-10),  
 39                       including a duty related disease that is also included within  
 40                       clause (B); or

41                  (B) a duty related disease (for purposes of this section, a "duty  
 42                  related disease" means a disease arising out of the fund

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member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); ~~and or~~

**(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-14; and**

(3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the disabled fund member does not have at least twenty (20) years of service or is not at least fifty-two (52) years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age.

(d) Except as otherwise provided in this subsection, a fund member:

(1) who becomes disabled after July 1, 2000;

(2) who is determined to have a covered impairment that is not a covered impairment described in subsection ~~(c)(2)(A)~~ or ~~(c)(2)(B)~~; **(c)(2)**; and

(3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the federal Americans with Disabilities Act;

is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the disabled fund member does not have at least twenty (20) years of service or is not at least fifty-two (52) years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age.

(e) Notwithstanding section 12.3 of this chapter and any other provision of this section, a member who:

(1) has had a covered impairment;

(2) recovers and returns to active service with the department; and

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1           (3) within two (2) years after returning to active service has an  
2           impairment that except for section 12.3 of this chapter would be  
3           a covered impairment;  
4           is entitled to the benefit under this subsection if the impairment  
5           described in subdivision (3) results from the same condition or  
6           conditions (without an intervening circumstance) that caused the  
7           covered impairment described in subdivision (1). The member is  
8           entitled to receive the monthly disability benefit amount paid to the  
9           member at the time of the member's return to active service plus any  
10          adjustments under section 15 of this chapter that would have been  
11          applicable during the member's period of reemployment.

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